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COMMITTEE ON THE ELIMINATION
OF RACIAL DISCRIMINATION

REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 9 OF THE CONVENTION

Second periodic reports of States parties due in 1996

Addendum

Czech Republic*

[4 June 1997]

* This document contains the initial and second periodic reports due on 22 February 1994 and 1996 respectively, submitted in one document.

The information submitted by the Czech Republic in accordance with the consolidated guidelines for the initial part of the reports of States parties is contained in the basic document HRI/CORE/1/Add.71.

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Introduction

1. The Czech Republic was established on 1 January 1993 after the division of the Czech and Slovak Federal Republic into two independent and sovereign States. On 19 January 1993, the Czech Republic became a member of the United Nations and succeeded to all human rights instruments binding on the former Czechoslovak State.

2. On 7 March 1966, the then Czechoslovak Socialist Republic (hereinafter referred to as "ČSSR") signed the International Convention on the Elimination of All Forms of Racial Discrimination. The Convention was approved by the National Assembly and ratified by the President of the Republic subject to a reservation in respect of article 22 and to a declaration regarding interpretation of article 17, paragraph 1. The instrument of ratification was deposited with the Secretary-General of the United Nations Organization on 29 December 1996.

3. The Convention entered into force in respect of the Czech Republic pursuant to article 19 on 4 January 1969. The Convention was promulgated in the Collection of Laws under No. 95/1974 Coll. On 16 November 1990, the Federal Assembly of the Czech and Slovak Federal Republic (hereinafter referred to as "ČSSR") approved the withdrawal of the reservation in respect of article 22 of the Convention.

4. By virtue of Constitutional Law No. 4/1993 Coll. on measures associated with the dissolution of ČSFR, the Czech Republic assumed all the obligations arising from international law in respect of ČSFR on the day of its dissolution, except for ČSFR's obligations in respect of the territory to which the sovereignty of ČSFR extended but to which the sovereignty of the Czech Republic does not extend. The said law took effect on 31 December 1992 and the Czech Republic has consequently been bound by the International Convention on the Elimination of All Forms of Racial Discrimination since 1 January 1993.

5. On 16 February 1993, the Czech Republic informed the Secretary-General of the United Nations Organization that, as a successor State to ČSFR, it intends to remain bound by the multilateral international instruments to which ČSFR was a party on the day of its dissolution. This declaration covered also the obligations arising in respect of ČSFR from the provisions of the International Convention on the Elimination of All Forms of Racial Discrimination. On 22 February 1993, the Secretary-General of the United Nations Organization notified the succession of the Czech Republic to the International Convention on the Elimination of All Forms of Racial Discrimination with effect from 1 January 1993.

IMPLEMENTATION OF ARTICLES 2-7 OF THE CONVENTION

Article 2

Prohibition of racial discrimination

6. The primary legislation for the protection of human rights and fundamental freedoms in the Czech Republic is the Charter of Fundamental

Rights and Freedoms (hereinafter referred to as "the Charter"), published in the Collection of Laws under No. 2/1993 and promulgated by resolution of the Presidium of the Czech National Council. The Charter is part of the constitutional order and incorporates all fundamental human rights and freedoms, namely the right not to be deprived of life, the right not to be subjected to torture or to any cruel treatment, the right to freedom of thought, conscience, religion and assembly, the universal and equal right to vote exercised by secret ballot, the right to fair trial, the right to personal liberty and inviolability of person and of privacy, etc.

7. The prohibition of discrimination on grounds of race underlies numerous general provisions of the Constitution of the Czech Republic and of the Charter. In addition it is embodied in laws and regulations such as the Civil Code and Code of Civil Procedure, Criminal Code and Code of Criminal Procedure, Code of Administrative Procedure, Labour Code, Law on State Social Benefits, Law on the Family, etc.

8. Prohibition of discrimination on grounds of race is introduced in Article 1 of the Charter which says that "... All people are free and equal in their dignity and their rights. Their fundamental rights and freedoms are inherent, inalienable, unlimitable, and irrepealable". This principle is basic to the legal status of the citizen within the legal system as a natural person having legal personality (i.e. having the capacity to assume rights and duties and capacity to perform legal and illegal acts). Prohibition of discrimination thus appears to be a complex of equal rights and equal duties belonging to all citizens without any legal (formal) privileges.

9. Race is among the exemplary distinctions enumerated in the Charter which may not constitute grounds for discrimination. Article 3 of the Charter states:

> "(1) Fundamental human rights and freedoms are guaranteed to everybody irrespective of sex, race, colour of skin, language, faith, religion, political or other conviction, ethnic or social origin membership in a national or ethnic minority, property, birth or other status.
>
> "(2) Everybody has the right to a free choice of his or her nationality. Any form of influencing this choice is prohibited, just as any form of pressure aimed at suppressing one's national identity.
>
> "(3) Nobody may be caused detriment to his or her rights because he or she asserts his or her fundamental rights and freedoms."

10. The article cited above applies to all acts of State authorities, including legislative bodies, public administration agencies and courts of justice.

Protection of fundamental rights and freedoms safeguarded by the Charter

11. Under article 4 of the Constitution, "rights and freedoms enjoy the protection of the judiciary". Equal protection of the rights and justified interests of all parties to judicial proceedings before a court is ensured by

the rules of procedure which apply equally to all parties and which safeguard the constitutional principle of independence of judges. Article 36 of the Charter explicitly specifies the right to judicial and other legal protection:

> "(1) Everybody may assert in the set procedure his or her right in an independent and impartial court of justice and in specified cases with another organ.
>
> "(2) Anybody who claims that his or her rights have been violated by a decision of a public administration organ may turn to a court for a review of the legality of such decision, unless the law provides differently. However, review of decisions affecting the fundamental rights and freedoms listed in the Charter may not be excluded from the jurisdiction of courts.
>
> "(3) Everybody is entitled to compensation for damage caused to him or her by an unlawful decision of a court, other organs of the State or public administration, or through wrong official procedure."

12. The legal device for protection against discrimination is a motion made to the competent court. Within the period of 60 days after the effective date of the decision on the ultimate remedy available for protection of the relevant right, and failing such remedy within the period of 60 days after the day on which the act was committed, a natural or legal person may lodge a constitutional complaint pursuant to section 74 of Law No. 182/1993 Coll. on the Constitutional Court, as amended.

13. Under article 87, paragraph 1, of the Constitution, the Constitutional Court may order the repeal of laws or their individual parts if they are found inconsistent with the constitutional law or with any international convention referred to in article 10 of the Constitution. Article 10 of the Constitution says that "ratified and promulgated conventions concerning human rights and fundamental freedoms which are binding on the Czech Republic are directly applicable and superior to law". The Constitutional Court has similar powers also in respect of other laws or their individual parts if they are found inconsistent with the constitutional law, with law or with any international convention referred to above.

14. The legislation described above ensures judicial protection against discrimination on grounds of race, along with the protection of rights safeguarded by the Convention.

Protection of the rights of national minorities

15. Data obtained in the 1991 census show that 1,848,110 persons residing in the territory of the Czech Republic class themselves as belonging to national groups other than Czech. The largest group is the Moravian national minority - 1,362,313 (13.2 per cent), followed by those who report Slovak nationality - 314,877 (approximately 3 per cent), Polish nationality - 59,383 (approximately 0.5 per cent), German nationality - 48,556 (approximately 0.3 per cent), Roma nationality - 32,903 (approximately 0.3 per cent), Hungarian nationality - 19,932 (approximately 0.2 per cent) and Ukrainian nationality - 10,146 (approximately 0.2 per cent).

16. Persons belonging to the above minorities reside in all districts of the Czech Republic. Geographical concentrations include the Polish community in the Český Těšín area (North Moravia, Czech-Polish border) and the German community in West and North Bohemia; Romas prefer to live in large industrial cities.

17. For the purposes of the census, most Romas used one of the rights safeguarded by the Charter, namely the right to identification with any national group, and reported nationality other than Roma. As a result, the ethnic Roma population by far exceeds the official figure (unofficial estimates are 150,000-200,000). Romas residing in the Czech Republic enjoy national minority status and thus are covered by the domestic legislation designed for national minorities.

18. The cornerstones of domestic legislation designed to protect national minorities are the Constitution of the Czech Republic, namely its article 6 which says "Minorities shall be protected by the majority in decision making", and the Charter, article 3 of which prohibits discrimination and introduces the right to identification with any national group (see paragraph 9 above).

19. Article 24 of the Charter states that "The national or ethnic identity of any individual shall not be used to his or her detriment".

20. Article 25 of the Charter safeguards the following minority rights:

> "(1) Citizens who constitute national or ethnic minorities are guaranteed all-round development in particular the right to develop with other members of the minority their own culture, the right to disseminate and receive information in their language, and the right to associate in ethnic associations. Detailed provisions are set by law.
>
> "(2) Citizens constituting national and ethnic minorities are also guaranteed under conditions set by law:
>
> "(a) the right to education in their language,
>
> "(b) the right to use their language in official contacts,
>
> "(c) the right to participate in the settlement of matters concerning national and ethnic minorities."

21. The overriding principle of the Czech policy in respect of national minorities is that the holder of minority rights is an individual belonging to a particular national minority and that such individual is primarily a citizen of the Czech Republic. Since minority rights are safeguarded by law, they are "rights" in the legal sense and consequently are protected by law and may be asserted in court. The Czech Republic takes care to enforce the so-called collective rights exclusively on the basis of claims made by individuals, not by groups; enforcement of such rights would otherwise conflict with the citizenship principle. This approach is based on the assumption that collective rights safeguarded on a group basis do not have concrete implications for each individual belonging to a national minority, for his right to invoke them and to assert them through procedures prescribed by law.

Article 3

22. As has already been said above, the Czech Republic succeeded by virtue of Constitutional Law No. 4/1993 Coll. to the legislation of the former ČSFR which safeguarded the obligations arising from the Convention on the Prevention and Punishment of the Crime of Apartheid to which ČSFR was a party. The Convention was published in the Collection of Laws of the Czechoslovak Socialist Republic under No. 116/1976 Coll. At the general level, safeguards for the obligations arising from the Convention are provided by the Constitution of the Czech Republic (articles 1 and 6) and by the Charter of Fundamental Rights and Freedoms (the aforementioned articles 1 and 3).

23. Article 1 of the Constitution characterizes the conditions for legality of the State power, stating "The Czech Republic is a sovereign, unified and democratic law-observing State, based on the respect for the rights and freedoms of the individual and the citizens." Article 6 of the Constitution introduces another attribute of the rule of law: "Political decisions shall derive from the will of the majority expressed through free voting. Minorities shall be protected by the majority in decision making."

24. Section 263a of the Criminal Code directly incorporates punitive sanctions for apartheid and other inhuman acts arising from racial discrimination and defines such crimes as "persecution of the population":

> "(1) A person who in time of war practises apartheid or commits other inhuman acts arising from racial discrimination or terrorizes defenceless civilian population by violence or threat of violence, shall be punished by imprisonment for a term of three to ten years.
>
> "(2) The offender shall be punished in like manner if, in time of war,
>
> "(a) he destroys or seriously damages a source of supplies vital for the civilian population residing in the occupied area or in the combat zone or arbitrarily denies the civilian population assistance necessary for survival,
>
> "(b) he without reasonable excuse impedes the return of civilian population or prisoners of war,
>
> "(c) he without reasonable excuse effects the displacement of civilian population residing in the occupied territory,
>
> "(d) he effects the settlement of the population of his own country in the occupied territory,
>
> or
>
> "(e) he arbitrarily prevents the civilian population or prisoners of war from having their guilt determined in impartial judicial proceedings.

"(3) The offender shall be punished by imprisonment for a term of eight to fifteen years or by an exceptional penalty if by the act defined in paragraph (1) or (2) he causes grievous bodily harm or death or any other especially serious consequence."

25. The Czech Republic has been watching with great interest the transition from apartheid to pluralistic democracy in the Republic of South Africa, its crucial partner on the African continent. It supports President Mandela's policy and welcomes the effort to settle the country's internal problems through negotiation.

26. The diplomatic relations between the then ČSFR and the Republic of South Africa were established on 29 October 1991. During the same year, the Federal Ministry of Foreign Trade terminated the previous restrictions on economic and commercial contacts with the Republic of South Africa while respecting ČSFR's international obligations in the military and security spheres. The Republic of South Africa recognized the Czech Republic and established diplomatic relations on 1 January 1993. The Czech minority in the country now totals 2,500. The Czech Embassy in South Africa is headed by a Chargé d'affaires and an ambassador is to be appointed, the Republic of South Africa has opened a diplomatic mission in Prague.

Article 4

Protection under criminal law

27. Acts motivated by racism or racial discrimination are punished under the provisions of the Criminal Code. The relevant legislation is in chapter V (crimes grossly violating good civic relations):

"Section 196

"Violence against a group of inhabitants and against individuals

"(1) A person who threatens a group of inhabitants with death, physical harm or substantial harm to property shall be punished by imprisonment for a term not exceeding one year.

"(2) A person who uses violence against a group of inhabitants or against an individual or merely threatens them with death, physical harm or substantial harm to property on grounds of their political conviction, nationality, race, religion or because they are atheists, shall be punished by imprisonment for a term not exceeding two years.

"(3) The punishment defined in paragraph 2 shall be applicable to a person who associates or assembles in order to commit such act.

"Section 198

"Defamation of a race, nation or conviction

"(1) A person who publicly defames

"(a) any nation, its language or any race, or

"(b) a group of inhabitants of the country on grounds of their political conviction, religion or because they are atheists, shall be punished by imprisonment for a term not exceeding one year.

"(2) The offender shall be punished by imprisonment for a term not exceeding three years if he commits the act defined in paragraph 1 together with at least two other persons."

28. In order to harmonize Czech legislation with the requirements contained in the Convention, the amended Criminal Code (1991) introduced a new definition:

"Section 198a

"Incitement to national and racial hatred

"(1) A person who publicly incites to hatred for any nation or race or to limitation of the rights and freedoms of persons belonging to such nation or race, shall be punished by imprisonment for a term not exceeding one year.

"(2) The offender shall be punished in like manner if he associates or assembles in order to commit the act defined in paragraph (1)."

29. Chapter XX of the Criminal Code deals with crimes against humanity, including:

"Section 259

"Genocide

"(1) A person who, acting with the intent to destroy, in whole or in part, any national, ethnic, racial, or religious group,

"(a) deliberately inflicts on persons belonging to any such group conditions of life calculated to bring about its physical destruction in whole or in part,

"(b) imposes measures intended to prevent births within the group,

"(c) forcibly transfers children of the group to another group, or

"(d) causes a person belonging to the group grievous bodily harm or death,

shall be punished by imprisonment for a term of twelve to fifteen years or by an exceptional penalty.

"(2) Complicity in the act defined in paragraph 1 shall be punished in like manner.

"Sponsoring and promotion of movements aimed to suppress the rights and freedoms of citizens

"Section 260

"(1) A person who sponsors or promotes a movement manifestly aimed to suppress the rights and freedoms of citizens or to advocate national, racial, class or religious hatred, shall be punished by imprisonment for a term of one to five years.

"(2) The offender shall be punished by imprisonment for a term of three to eight years,

"(a) if he commits the act defined in paragraph 1 through press, film, radio, television or in any other similarly effective manner,

"(b) if he commits such act as a member of an organized group, or

"(c) if he commits such act in time of defence emergency."

30. As regards sanctions for incitement to acts aimed to suppress the rights and freedoms of citizens as defined in section 260 of the Criminal Code or participation in such acts, the operative legislation introduces equal criminal liability for direct commission of the act and for planning, directing, abetment of the act or for complicity (section 10 of the Criminal Code).

"Section 261

"A person who publicly expresses his sympathy for fascism or any other similar movement as defined in Section 260, shall be punished by imprisonment for a term of six months to three years."

31. Incidence of separate acts belonging to this category is low, they usually coincide with crimes such as:

Section 221	-	bodily harm
Section 213	-	restricting personal liberty
Section 234	-	robbery
Section 238	-	arbitrary interference with home
Section 235	-	extortion
Section 257	-	property damage
Section 247	-	larceny
Sections 155-156	-	assault against a public official (in situations of police intervention)
Section 249	-	murder.

Criminal liability for racially-motivated crime

32. The category of "racially-motivated crime" includes acts in which the motive is found to be racial or ethnic hatred; the crimes enumerated in paragraph 31 above frequently come within this category (sections 196, 197, 198, 198a, 260 and 261 of the Criminal Code).

33. Despite its low incidence compared with total recorded crime, racially-motivated malfeasance, with its impact on the society, is a serious symptom with considerable repercussions in the social and political spheres and must be viewed as a major negative phenomenon in the overall patterns of crime. Typically, the offender is a skinhead or a sympathizer of the skinhead movement; the victim is a Roma or a person resembling a Roma. The latter include foreigners, mostly Bulgarians or Romanians. Other groups prone to violent attacks include Jews, Blacks, Chinese and Vietnamese, more rarely Slovaks or Czechs or foreign students in general. With several minor exceptions, racially-motivated crimes are committed by at least two offenders, and predominantly by groups of 10-30 persons. Such cases are rather move demanding in terms of presentation of evidence and correct classification of individual acts.

34. To counter the rising trend towards racial violence, the Ministry of the Interior and the Ministry of Justice have decided to sharpen their performance in this respect. Starting from May 1995, the following changes have been made:

(a) Ministry of Justice:

(i) Amendment to the Criminal Code effective from 1 September 1995 makes provisions to increase the penalties of racially-motivated crimes on the average by one year in jail;

(ii) Starting from 1 June 1995, public prosecutors are instructed to ensure prompt judicial action in cases of racially-motivated crime. This instruction has already borne fruit - 117 prosecutions and 109 charges for racially-motivated crime were recorded from June to August 1995, while the total figure for 1994 was 155 cases;

(b) Ministry of the Interior:

(i) Starting from 1 January 1996, each district police department has an expert on combating racial violence;

(ii) Starting from 31 October 1995, all police departments use standardized methods of recording racially-motivated offences;

(iii) On 1 June 1995, a special riot police squad (170 men) was established in Prague; its tasks include handling public order violations committed by groups as well as offences motivated by racial and national intolerance. A similar squad has been functioning in Ostrava since 1 January 1993;

(iv) Binding Instruction of the President of the Police issued on 19 May 1995 determines the procedures to be observed by the police force when protecting public order in cases of its violations by groups and when investigating crimes motivated by racial intolerance;

(v) Instruction of the Director of the Investigation Authority for the Czech Republic issued on 23 May 1995 determines procedures to be observed when investigating crimes motivated by racial intolerance;

(vi) Police officers who neglect their duties when handling the cases of racially-motivated violence face strict sanctions. For example, the director of the district department in Nový Jičín was removed after failing to detain a group of skinheads who attacked Romas.

35. Prosecutions and charges for crimes motivated by racial, national or other hostility.

Section of Criminal Code	1993		1994		1995	
	Prosecution	Charges	Prosecution	Charges	Prosecution	Charges
196/2	31	20	52	47	177	162
196/3					18	17
198	15	9	40	36	112	108
198a	8	4	13	13	28	22
221 (para 2b)	1	0	3	3	13	12
222 (para 2b)	3	1	13	12	23	23
260	8	5	34	32	1	1
261	11	6	13	13	16	16

36. Final convictions for crimes with racial motive.

Section of Criminal Code	1993		1994		1995		1996 (Jan. - June)	
	Total	Juveniles	Total	Juveniles	Total	Juveniles	Total	Juveniles
196 para. 2	-	-	9	5	35	16	20	11
196 para. 3	-	-	-	-	17	14	2	2
198	-	-	1	-	16	8	6	5
198a	-	-	-	-	8	-	3	3
219	-	-	-	-	3	-	1	-
221 para. 2	2	-	1	-	12	3	42	6
222 para. 2b	2	-	1	-	8	6	7	2
261	7	3	4	-	32	8	24	15

Serious crimes with racial motive

37. Case of Tibor Danihel who drowned in the Otava river at Písek on 24 September 1993 after jumping in the river together with three other Romas in fear of a group of skinheads who harassed them: Tibor Danihel died in connection with a skinhead rally, during which skinheads marching through the town shouted racist slogans. The skinheads, together with other persons, harassed several Romas who were on an island in the Otava river, using abusive language, insulting them for their Roma origin and colour and threatening them with death. The skinheads and their sympathizers were armed with baseball bats and chains. Fearing the skinheads and attempting to escape, a group of Roma boys jumped into the river and Tibor Danihel drowned. Numerous legal aspects of this case still require reassessment because, along with the fear of skinheads, the death of Tibor Danihel was largely due to the effect of organic solvents which he was inhaling with his friends on the island.

38. The case was referred to the District Investigation Authority in Písek. On 22 July 1994, the investigator proposed bringing charges against 19 offenders for violence against a group of inhabitants and against individuals under section 196/1,2,3 of the Criminal Code and for promotion and support of movements aiming to suppress the rights and freedoms of citizens under section 260/1 of the Criminal Code. The Public Prosecutor returned the charges for additional investigation. The investigation was completed on 6 March 1996 by the proposal to file charges for the above crimes against four offenders; additional charges for extortion under section 235/1,2c of the Criminal Code were brought against three of them. The criminal prosecution against the remaining 15 persons did not proceed due to lack of evidence under section 171/1c of the Code of Criminal Procedure. On 2 May 1996, the District Prosecutor in Písek filed charges against four offenders for the crimes as determined in the proposal of 6 March 1996. The matter is now pending before the District Court in Písek.

39. Case of the skinheads who on 11 July 1994 threw an incendiary bottle into a flat inhabited by a Roma family at Jablonec nad Nisou, causing a fire in which two Roma women suffered serious burns: On 11 July 1994 at approximately 11 p.m., four men threw incendary bottles into a flat at Jablonec nad Nisou setting its furnishings on fire. Two Roma women were injured in the fire, suffering second- and third-degree burns, and furnishings worth approximately CK 40,000 were damaged.

40. The case was referred to the District Investigation Authority in Jablonec nad Nisou. The investigation was concluded on 31 January 1995 by the proposal to charge four accomplices with the crime of public menace under section 179/1 of the Criminal Code, violence against a group of inhabitants and against individuals under section 196/2 of the Criminal Code, damage to property under section 257/1 of the Criminal Code and bodily harm under section 222/1,2b of the Criminal Code. In addition, charges were brought for abetment of violence against a group of inhabitants and against individuals under sections 10/1b and 196/2 of the Criminal Code. Under the final judgement given by the District Court in Jablonec nad Nisou on 13 April 1995 and the judgement given by the Regional Court in Ustí nad Labem on 11 August 1995, the offenders received a prison sentence without suspension for crimes under sections 9/2, 179/1, 196/2 and 222/1,2b of the Criminal Code and for abetment of violence against a group of inhabitants and against

individuals under sections 10/1b and 196/2 of the Criminal Code. The judgement included a monetary award for damages (CK 39,535), claims to additional damages may be asserted in civil action.

41. Case of the skinheads who broke into the private flat of the Roman Tibor Berki in Ždár nad Sázavou on 24 May 1995 and beat him to death in the presence of his family: On 13 May 1995 between 9.30 p.m. and 10 p.m., four offenders who had previously agreed to go and harass Romas made a forcible entry into the house at Ždár nad Sázavou in which the family of Tibor Berki lived. After forcibly entering the flat, they damaged the furnishings and one of them repeatedly hit Tibor Berki on the head with a baseball bat. Tibor Berki died of his injuries in the hospital at Nové Mésto na Moravě on 14 May 1995.

42. The case was referred to the Regional Investigation Authority of the South Moravia region. The investigation was concluded on 14 July 1995 by the proposal to file charges against four offenders for the crime of violence against a group of inhabitants and against individuals under section 196/2,3 of the Criminal Code and against one offender for murder under section 219/1,2f of the Criminal Code. The Regional Court did not accept the racial motive; however, the appellate court - the High Court in Olomouc - affirmed its existence in the judgement given on 23 May 1996. The sanctions imposed ranged from a suspended sentence to two months in prison to a 13 year prison sentence without suspension for crimes under section 219/1,2b of the Criminal Code (murder) and under section 196/2 of the Criminal Code (violence against a group of inhabitants and against individuals), under section 238/1,3 of the Criminal Code (breach of the inviolability of the home) and under section 202/1 of the Criminal Code (rowdyism).

Freedom of assembly

43. Article 19 of the Charter provides for the freedom of assembly and the relevant constitutional restrictions:

> "(1) The right to assembly peacefully is guaranteed.
>
> "(2) This right may be limited by law in the case of assemblies held in public places, if measures are involved, which are essential in a democratic society for protecting the rights and freedoms of others, public order, health, morality, property or the security of the State. However, assembly shall not be made dependent on permission by an organ of public administration."

44. The right of assembly is thus guaranteed for every natural person irrespective of age, colour, sex, citizenship or any other distinctions. "Assembly" means assembly in places accessible to the general public.

45. Positive safeguards for this right are provided by Law No. 84/1990 Coll. on the right of assembly, as amended. The consent of the relevant State authority need not be obtained prior to holding an assembly. On the other hand, Law No. 84/1990 Coll. requires the organizer to inform the authorities about the planned assembly and its aims; the Law enumerates situations in

which an assembly need not be reported (section 4, paragraph 1). However, an assembly may be banned if the aims reported by the organizer imply incitement to (section 10):

(a) Denying or restricting the individual, political or other rights of citizens on grounds of nationality, sex, race, origin, political or other conviction, religion or social status or incitement to hostility and intolerance on the grounds cited above;

(b) Commission of violent acts or gross indecency;

(c) Any other acts violating the Constitution and laws.

46. The organizers may attack such ban by appeal to the competent court (section 11, paragraph 3).

Freedom of association

47. Article 20 of the Charter provides for the freedom of association and the relevant constitutional restrictions:

> "(1) The right to associate freely is guaranteed. Everybody has the right to associate with others in clubs, societies and other organizations.
>
> "(2) Citizens also have the right to form political parties and political movements and to associate therein.
>
> "(3) The exercise of these rights may be limited only in cases specified by law, if measures are involved, which are essential in a democratic society for the security of the State, protection of public security and public order, prevention of crime, or for protection of the rights and freedoms of others.
>
> "(4) Political parties and political movements, as well as other associations, are separated from the State."

48. The primary operative legislation covering the right of association is in Law No. 83/1990 Coll. on associations of citizens, as amended, and Law No. 424/1991 Coll. on associating in political parties and political movements, as amended.

49. Section 4 of Law No. 83/1990 Coll. prohibits associations aiming to deny or restrict the individual, political or other rights of citizens on grounds of nationality, sex, race, origin, political or other conviction, religion and social status, to instigate hostility and intolerance on the said grounds, to encourage violence or otherwise violate the Constitution and laws. This ban applies also to associations pursuing their aims by methods inconsistent with the Constitution and laws, armed associations or associations comprising armed units:

"The following associations are prohibited:

"(a) associations aiming to deny or restrict the individual, political or any other rights of citizens on grounds of nationality, sex, race, origin, political or other conviction, religion and social status, to instigate hostility and intolerance of such grounds, to encourage violence or to violate the Constitution and laws in any other manner;

"(b) associations which pursue their aims by methods inconsistent with the Constitution and laws;

"(c) ..."

50. The Ministry of the Interior may refuse to register an association seeking formal registration if the statutes of such association imply that it should be banned on the grounds cited above. Similar precautions are taken in case a previously registered association wishes to amend its statutes.

"Section 4 of Law No. 424/1990 Coll.

"Establishment and functioning of the following parties and movements is prohibited:

"(a) parties and movements violating the Constitution and laws or seeking to destroy the democratic foundations of the State;

"(b) ...

"(c) parties and movements intending to seize and retain power in order to prevent other parties and movements from seeking to attain power through constitutional procedures or intending to suppress equality of citizens;

"(d) parties and movements with programmes or activities which endanger public morals, public order or rights and freedoms of citizens."

51. Where it appears to the Ministry of the Interior that the statutes of a political party or movement imply aims referred to in section 4, it may refuse to effect formal registration. The Supreme Court may suspend the activities of an existing political party if they are in contravention of section 4 or of the party's statutes. In case of continued contravention the Supreme Court may dissolve the party or movement. Motions to this effect may be made by the Government or by the President of the Republic.

52. The quotation from Law No. 83/1990 Coll. on associations of citizens proves that it is virtually impossible for an organization advocating racial discrimination to obtain formal registration. For this reason, advocates of racism associate on an informal basis. The Security Intelligence Service of the Czech Republic monitors the activities of such extremist groups and keeps the Government informed about any relevant developments; the Government determines concrete action to suppress racial discrimination. Problems

related to intolerance, nationalism, chauvinism, xenophobia and anti-Semitism are high on the list of priorities of the police. Such undesirable phenomena come under the competence of the criminal police; police statistics classify them as extremist movements included under the rubric "juvenile delinquency". The procedures to be observed by the police in such cases are governed by the relevant operative regulations.

Article 5

The right to equal treatment before courts

53. The right to judicial protection is safeguarded by article 36 of the Charter:

> "(1) Everybody may assert in the set procedure his or her right in an independent and impartial court of justice and in specified cases with another organ.
>
> "(2) Anybody who claims that his or her rights have been violated by a decision of a public administration organ may turn to a court for a review of the legality of such decision, unless the law provides differently. However, review of decisions affecting the fundamental rights and freedoms listed in the Charter may not be excluded from the jurisdiction of the courts.
>
> "(3) Everybody is entitled to compensation for damage caused to him or her by an unlawful decision of a court, other organs of the State or public administration, or through wrong official procedure.
>
> "(4) The conditions and detailed provisions in this respect shall be set by law."

54. In the Czech Republic, the right to judicial protection belongs to everybody irrespective of citizenship. The assertion of rights through the "set procedure" is governed by the rules of procedure, namely by Law No. 99/1963 Coll. as amended (Code of Civil Procedure) and Law No. 71/1967 Coll. on administrative procedure, as amended (hereinafter referred to as the Code of Administrative Procedure). Rights may be asserted in court or, in cases specified by law, through other, mostly administrative, authorities.

55. The right to equal treatment is safeguarded by article 37 of the Charter:

> "(1) ...
>
> "(2) Everybody has the right to legal assistance in proceedings held before courts, other organs of the State, or public administration organs from the beginning of such proceedings.
>
> "(3) All parties are equal in the proceedings.

"(4) Whoever states that he or she does not speak the language in which the proceedings are conducted is entitled to the services of an interpreter."

56. The main purpose of paragraph 2 is to ensure the right to present defence. "Legal assistance" means legal representation in general, i.e. representation in civil, administrative and other matters, provided that such assistance is required in "proceedings" within the meaning of article 37, paragraph 2. Everybody is entitled to legal assistance irrespective of citizenship. While the cited article 37, paragraph 2, ensures this right only for natural persons, the rules of procedure make similar provisions for legal persons.

57. Corollary to the constitutional provisions on legal assistance is the requirement in public law that the authorities mentioned in article 37, paragraph 2, must not prevent a party to any proceedings from using legal assistance. The authorized representative providing legal assistance must not be barred from participating in the proceedings and from acting on behalf of his client, namely from making motions on his behalf, the client must not be barred from consulting his representative during the proceedings, etc.

58. Though the Charter does not require the appointment of a defence counsel ex officio in criminal trials, this requirement is referred to in section 36 of the Criminal Code.

59. Everybody is entitled to legal assistance from the very beginning of the proceedings. This is of highest importance especially in criminal trials, since the defendant may retain defence counsel until all the procedures have come to an end, i.e. until the final verdict. Legal assistance is consequently available at any stage of the proceedings (i.e. proof proceedings, enforcement of judgement, contentious and non-contentious proceedings, etc.) before courts of any instance.

60. A significant principle governing Czech criminal procedure is in section 2, paragraph 13, of the Code of Criminal Procedure: the party against whom the proceedings are instituted must at all stages of the proceedings be informed about his right to present defence and to retain counsel. Law enforcement authorities must facilitate the exercise of this right, including the appointment of a competent counsel. This principle is basically designed to assist the defendant and to ensure that all evidence introduced in his favour is duly considered.

61. When applied to natural persons, equal treatment before the courts reflects the equality of all human beings as defined in article 1 of the Charter. This is a specific, procedural equality, implying that none of the parties may be accorded preferential treatment in judicial proceedings.

62. Equality of all parties to the proceedings within the meaning defined above is among the fundamental procedural principles applicable to natural and legal persons as well as to the State, or more precisely to any State authority participating in a lawsuit as a "proper" party, not as a representative of the State power. This principle governs any "proceedings", i.e. in any procedure subject to legal rules and designed to decide on the

rights and obligations of the parties. It is by nature a principle to be applied in contentious proceedings, i.e. in proceedings in which the parties are adversaries.

63. This procedural principle is in essence corollary to the requirement in article 96, paragraph 1, of the Constitution, namely that all parties to a case should have equal rights. All persons participating in lawsuits thus have equal status and are subject to the same rules.

64. Concrete rules governing the application of this principle are in section 18 of the Code of Civil Procedure: ("All parties to a trial in civil action have equal status. They may use their mother language during the hearing. The court has the duty to create for them equal opportunities for asserting their rights.") as well as in Law No. 335/1991 Coll. on courts and judges, and above all in various rules of procedure, e.g. in the Code of Criminal Procedure (Law No. 141/1961 Coll. as amended). The Law on Courts and Judges moreover states that all persons are equal before the law and before the court, and that everybody is entitled to judicial protection of his legal rights, freedoms and interests, unless the law entrusts such protection to an authority other than the court.

The right to security of person and protection by the State against violence

65. The right to protection of personal liberty is safeguarded by article 8 of the Charter:

> "(1) Personal freedom is guaranteed.
>
> "(2) Nobody may be prosecuted or deprived of his or her freedom except on grounds and in a manner specified by law. Nobody may be deprived of his or her freedom merely because of his or her inability to meet a contractual obligation.
>
> "(3) Any person accused or suspected of having committed a criminal offence may be detained only in cases specified by law. Such detained person shall be informed without delay of the reasons for the detention, questioned, and not later than within twenty-four hours released or turned over to a court. Within twenty-four hours of having taken over the detained person, a judge shall question such person and decide whether to place in custody or to release the person.
>
> "(4) A person accused of a criminal act may be arrested only on the basis of a judge's order, which includes the grounds for its issue. The arrested person shall be turned over to a court. Within twenty-four hours of having taken over the detained person, a judge shall question such person and decide whether to place in custody or to release the person.
>
> "(5) Nobody may be placed in custody except for reasons specified by law and on the basis of a judicial decision.

"(6) The law shall determinate the cases when a person may be admitted to or kept in a medical institution without his or her consent. Such move shall be reported within twenty-four hours to a court which shall then decide on such placement within seven days."

66. By virtue of the above constitutional provision guaranteeing personal liberty, the State undertakes to protect personal liberty using the legislative power (i.e. by law) as well as the executive and judicial powers. The right to personal liberty belongs to every human being irrespective of legal capacity and irrespective of citizenship or statelessness and exists from birth to death. It is an absolute right applicable against natural and legal persons (including persons in public law) as well as against the State itself.

67. Article 8 implies that violations of the right to personal liberty include deprivation and restriction of personal liberty as well as acts of third parties (natural and legal persons or the State) which have resulted or may result in physical deprivation of liberty.

68. As regards the relevant safeguards in criminal law, personal liberty is protected by the Criminal Code, namely by chapter seven (crimes against life and health).

Protection of political rights

69. The right to participate in the conduct of public affairs, one of the fundamental political rights, is safeguarded by article 21 of the Charter:

"(1) Citizens have the right to participate in the administration of public affairs either directly or through free election of their representatives.

"(2) Elections shall be held within terms not exceeding statutory electoral terms.

"(3) The right to vote is universal and equal, and shall be exercised by secret ballot. The conditions under which the right to vote is exercised are set by law.

"(4) Citizens shall have access to any elective and other public office under equal conditions."

This is a universal right belonging to every citizen irrespective of sex, nationality, religion, membership of any political group or any other distinctions. Consequently, no individual or group may be denied this right on any grounds whatever; no law may be introduced to enable such denial. This right is not subject to any conditions and the Charter does not permit any, even temporary, restrictions.

70. "Conduct of public affairs" means taking part in the political life of the State, Government and conduct of public affairs in municipalities and higher units of territorial self-administration. It implies the opportunity to seek and hold any office in public life without any discrimination.

This right covers participation in direct democracy as well as in elections to all representative bodies and is linked to articles 2 and 18 of the Constitution and articles 1 and 3 of the Charter:

"Article 2 of the Constitution

"(1) All State power derives from the people; they exercise this power by means of their legislative, executive and judicial bodies.

"(2) A constitutional law may stipulate the cases when the people exercise the State power directly.

"(3) The State power serves all citizens and can be exercised only in cases and within the scope stipulated by law.

"(4) Every citizen may do whatever is not forbidden by law, and no one may be forced to do what the law does not impose."

"Article 18 of the Convention

"(1) Elections to the Chamber of Deputies shall be held on the basis of universal, equal and direct suffrage by secret ballot, according to the principles of proportional representation.

"(2) Elections to the Senate shall take place on the basis of universal, equal and direct suffrage by secret ballot on the basis of the majority system.

"(3) Every citizen of the Czech Republic on reaching the age of 18 has the right to vote."

71. Article 21, paragraph 3, of the Charter sets forth the conditions and requirements governing free election of members of the bodies through which the citizens take part in the conduct of public affairs. The primary principle is the universal and equal right to vote exercised by secret ballot. The conditions for exercise of the right to vote are determined in a special law.

72. The principles governing elections to the Chamber of Deputies are set forth in article 18, paragraph 1, of the Constitution; elections to the Senate are regulated by article 18, paragraph 2 of the Constitution. The rules for elections to councils of municipalities and higher units of territorial self-administration are specified in article 102 of the Constitution. Special legislation on elections to the Chamber of Deputies and to the Senate is in Law No. 247/1995 Coll. on elections to the Parliament of the Czech Republic. Elections to municipal councils are regulated by Law No. 152/1994 Coll. on elections to municipal councils, amending and extending certain previous laws.

"Article 102 of the Constitution

"(1) Members of the board of representatives are elected by secret ballot on the basis of universal, equal and direct suffrage.

"(2) The term of office of the board of representatives is four years. The law stipulates under what conditions new elections to the board of representatives shall be called before the expiration of its term of office."

73. The right to participate in the conduct of public affairs is linked to the right to equal access to elective and other public offices.

74. The principle of "equal access" means that the rules or practices of the State authorities must not entail preferential or discriminatory treatment of any group of citizens seeking access to public offices. Preference or discrimination on grounds of sex, race, colour, language, faith or religion, political or other conviction, national or social origin, membership of any national or ethnic minority, property, birth or other status (article 3 of the Charter) is inadmissible. The distinctions enumerated above may not be used as criteria for determining eligibility for any such office.

Right to freedom of movement

75. The freedom of movement and residence, one of the fundamental freedoms, is safeguarded by article 14 of the Charter:

"(1) Freedom of movement and residence is guaranteed.

"(2) Everybody who is legitimately staying on the territory of the Czech Republic has the freedom to leave it.

"(3) These freedoms may be limited by law if it is essential for the security of the State, for maintenance of public order for protection of the rights and freedoms of others, and in demarcated areas also for the purpose of protecting nature.

"(4) Every citizen is free to enter the territory of the Czech Republic. No citizen may be forced to leave his or her country.

"(5) A foreign citizen may be expelled only in cases specified by law."

Freedom of movement, defined in article 14 of the Charter, is understood as the right of any natural person to freely move within the territory of the Czech Republic demarcated by its State borders. The right to free movement within the territory of the Czech Republic means that a natural person may visit any place within the State borders, barring cases in which restrictions are imposed by a law enacted pursuant to paragraph 3 of the said article of the Charter.

76. The Charter (enacted in 1991) is the first regulation in the history of Czech constitutional law to incorporate freedom of movement; previous constitutions (1920, 1948 and 1960) never explicitly mentioned this freedom.

77. Freedom of movement is further understood as the right to freely reside and settle at any place in the Czech Republic, as the right to freely choose domicile within the country.

78. As regards Czech domestic legislation, Law No. 135/1982 Coll. on reporting and registration of domicile, as amended, distinguishes between "permanent residence" and "temporary residence". Any persons found to be without de facto permanent residence would have to comply with Law No. 74/1958 Coll. on permanent settlement of migrant population, as amended.

79. The Charter ensures freedom of movement and of domicile for every natural person, Czech citizens as well as aliens and stateless persons legitimately residing in the territory of the Czech Republic. The legal regime for short-term, long-term or permanent residence of aliens is set forth in Law No. 123/1992 Coll. on the stay of aliens in the territory of the Czech and Slovak Federal Republic, as amended. Special rules have been designed for aliens seeking or holding refugee status (Law No. 498/1990 Coll. on refugees, as amended).

80. The Criminal Code safeguards the freedom of movement through outlawing restriction of personal liberty (section 231: "A person who without reasonable excuse prevents another person from enjoying personal liberty shall be punished ..."), deprivation of personal liberty (section 232: "A person who deprives another person of personal liberty shall be punished ...") and kidnapping (section 233: "A person who takes and carries another person away to another country shall be punished ...").

81. The Charter explicitly states that any person "legitimately staying in the territory of the Czech Republic has the freedom to leave it". This right belongs to all natural persons, Czech citizens as well as aliens and stateless persons. According to the Charter, the right to leave the Czech Republic is contingent on having lawful residence in the country.

82. Under Law No. 216/1991 Coll. on travel documents and travel abroad, as amended, the following two requirements apply for a Czech citizen seeking to leave the country:

(a) He must possess a valid travel document of the Czech Republic;

(b) He may cross the State border only via border crossing points designed for international travel, unless provided otherwise in an international agreement binding on the Czech Republic. This condition applies to all natural persons irrespective of citizenship.

83. Freedom of movement and residence may be restricted only by law; no constraints may be imposed by subordinate legislation. The Charter enumerates situations warranting restriction of the freedom of movement and residence. However, this list may not be extended by means of ordinary laws. Only the State authorities, including the Constitutional Court, are empowered to interpret the above concepts.

<u>The right to citizenship</u>

84. Article 12 of the Constitution prohibits deprivation of citizenship against the wishes of the person concerned:

"(1) Procedures binding for the acquisition and loss of Czech citizenship are stipulated by law.

"(2) No one can be stripped of his or her citizenship against his or her will."

85. The rules of acquiring and losing citizenship are in Law No. 40/1993 Coll. on acquisition and loss of citizenship of the Czech Republic, as amended.

86. Czech domestic legislation allows citizenship to be acquired:

(a) At birth;

(b) Through adoption;

(c) Through determination of paternity;

(d) By children found in the territory of the Czech Republic;

(e) Through declaration;

(f) Through conferment.

87. Most people acquire citizenship at birth. A child becomes a Czech citizen:

(a) If at least one of his parents is a Czech citizen (ius sanguinis);

(b) In case his parents are stateless, if at least one of them permanently resides in the territory of the Czech Republic and the child is born in that territory (ius soli).

88. Special rules apply to an illegitimate child whose mother is a foreign citizen or stateless and whose father is a citizen of the Czech Republic. Such children acquire Czech citizenship on the day of consonant declaration by the parents of paternity, or on the effective date of the affiliation order.

89. The following requirements govern the conferment of citizenship on natural persons over 15 years of age:

(a) Permanent residence in the territory of the Czech Republic for at least five continuous years immediately preceding the day of the filing of the application;

(b) Certificate of release for previous citizenship or a document proving that the person will lose his previous citizenship upon conferment of the Czech citizenship;

(c) No conviction for an intentional crime recorded within the last five years;

(d) Knowledge of the Czech language.

Children under 15 years of age may be included on the applications of their parents (legal representatives) or a separate application may be filed on behalf of each child.

90. Citizenship applications are filed with the district office in the municipality/district where the applicant permanently resides. They are considered by the Ministry of the Interior; the Ministry may waive the requirements referred to in paragraph 89 above:

(a) If the applicant permanently resides in the territory of the Czech Republic and was born in the territory of the Czech Republic, or has lived in the territory of the Czech Republic, for at least 10 continuous years; or the applicant possessed Czech citizenship (or citizenship of the Czech and Slovak Federal Republic) in the past, or was adopted by a Czech citizen, or his/her spouse is a Czech citizen, or at least one of his parents is a Czech citizen, or he settled in the Czech Republic before 31 December 1994 on the basis of an invitation from the Government;

(b) If the applicant has permanently resided in the territory of the Czech Republic for at least five continuous years, provided that the laws and regulations of the State of which he is a citizen do not permit release from citizenship or the State refuses to issue a certificate of release;

(c) For citizens of the Slovak Republic or former citizens of the Slovak Republic, if the permanent residence in the territory of the Czech Republic commenced no later than 31 December 1992;

(d) In cases meriting special attention.

91. Article 12, paragraph 2, of the Constitution prohibits stripping Czech citizenship from any citizen (see paragraph 84 above).

92. The previous legislation - Law No. 194/1949 Coll. on acquisition and loss of Czechoslovak citizenship - permitted involuntary deprivation of citizenship; following the establishment of the Czechoslovak federation in 1968. This practice was reaffirmed by the Law of the Czech National Council No. 239/1969 Coll. on acquisition and loss of the citizenship of the Czech Socialist Republic, as amended by the statutory regulation of the Presidium of the Czech National Council No. 124/1969 Coll. Deprivation of citizenship as a unilateral act of the State power was abolished by Law No. 88/1990 Coll. amending and extending regulations for acquisition and loss of citizenship. Such deprivations were annulled ex lege and, starting from 29 March 1990, people previously stripped of citizenship are treated as released from citizenship. Persons wishing to recover their Czechoslovak (Czech) citizenship were required to file written applications for recovery of citizenship with the competent authority before 31 December 1993. Those who did so are now treated as if they have never ceased to be Czech citizens. People released from citizenship in the period 1 October 1949 - 31 December 1989 could likewise obtain recovery of citizenship through application filed before 31 December 1993; they were repatriated provided that such repatriation was consistent with the international obligations of the Czechoslovak federation (Czech Republic).

The right to freely contract marriage

93. All Czech citizens have equal rights in connection with marriage. For every man or woman, the choice of a partner is a private matter. Section 1 of Law No. 66/1963 Coll. (Law on the Family), as amended, states that "marriage is contracted by concurrent declaration of a man and a woman before an organ of the State or before an organ of a church or of a religious society that they are entering into marriage; marriage is contracted publicly and in a ceremonial fashion, in the presence of two witnesses".

94. Marriage cannot be contracted between minors (under 18 years of age), ascendants and descendants and between siblings; the same applies to relationships established by adoption. Polygamy is not permitted. In exceptional cases compatible with the social purpose of marriage, the court may on serious grounds grant permission to contract marriage to a minor over 16 years of age. Marriage cannot be contracted by a person suffering from any mental disorder that warrants limitation of legal capacity. The court may permit such marriage provided that the health condition of the person is compatible with the social purpose of marriage.

The right to protection of ownership and the right to inherit

95. The constitutional protection of ownership is introduced in article 11 of the Charter:

> "(1) Everybody has the right to own property. The ownership right of all owners has the same statutory content and enjoys the same protection. Inheritance is guarantee.
>
> "(2) The law shall specify which property essential for securing the needs of the whole society, development of the national economy, and public welfare may be owned exclusively by the State, the community, or by specified legal persons: the law may also specify that some things may be owned exclusively by citizens or by legal persons having their seat in the Czech Republic.
>
> "(3) Ownership is binding. It may not be misused to the detriment of the rights of others or against legally protected public interests. Its exercise may not cause damage to human health, nature and the environment beyond statutory limits.
>
> "(4) Expropriation or the other forcible limitation of the ownership right is possible only in the public interest and on the basis of law, and for compensation.
>
> "(5) Taxes and fees may be levied only on the basis of law."

96. Everybody has the right to own property. Nonetheless, paragraph 2 facilitates a potential exception to this general rule by permitting the legislator to reserve certain types of property for citizens of the Czech Republic or for legal persons incorporated in the Czech Republic.

97. The second sentence of paragraph 1 proclaims equality of ownership and describes the legal devices designed for its protection. The chief objective is to abolish the separate categories of ownership and their hierarchical arrangement introduced by the 1960 Constitution or by the original version of the Civil Code No. 40/1964 Coll. (hereinafter referred to as the Civil Code), etc. Equality of ownership under paragraph 1 does not imply equality as to the object of ownership (it is an equality as to the content and protection of this right). Paragraph 2 indicates that certain types of property may be reserved for certain persons. Equal protection of the rights of all owners is safeguarded by criminal law. The previous unfounded discrimination in protection of ownership was eliminated by the amendment to the Criminal Code effective from 1 July 1990 (Law No. 175/1990 Coll.).

98. In the area of criminal law, ownership is protected by the Criminal Code, chapter nine of the Special Part (crimes against property). The Code protects ownership and related rights, including the right to peaceable possession; individual related interests are covered to a varying extent. Further safeguards for property-related interests are in certain other chapters of the Special Part, namely in chapter two (economic crime), chapter four (public menace), chapter eight, part one (crimes against personal liberty), chapter ten (crimes against humanity) and in chapter twelve (military crimes).

99. The last sentence of paragraph 1 implies that the law must not suppress the right to inherit. On the other hand, the law may set out procedures for inheriting, determine who qualifies as an heir and define the object of inheritance, provided that such regulations do not exceed the limits imposed by the Charter in article 1 and article 3, paragraphs 1 and 4, first sentence. More specific rules are in chapter three, part seven of the Civil Code No. 40/1964 Coll., as amended.

The right to freedom of thought, conscience and religion

100. Constitutional safeguards for the right to freedom of thought, conscience and religion are contained in article 15 of the Charter:

> "(1) Freedom of thought, conscience and religious conviction is guaranteed. Everybody has the right to change his or her religion or faith, or to have no religious conviction.
>
> "(2) Freedom of scientific research and of the arts is guaranteed.
>
> "(3) Nobody may be forced to perform military service against his or her conscience or religious conviction. Detailed provisions are set by law."

The aforesaid freedoms apply not only to Czech citizens, but to every human being; they are universal by nature.

101. Additional safeguards in the domestic legal system are provided in Law No. 308/1991 Coll. on the freedom of religious societies, as amended.

Under this law, nobody may be forced to profess any faith or to be without denomination (section 1, paragraph 2). Religious freedom is protected by section 236 of the Criminal Code.

The right to work

102 Article 26 of the Charter is a constitutional safeguard of the right to work for all citizens of the Czech Republic irrespective of race, colour, sex, language, religion, political or other conviction, membership of any political party or movement, nationality, ethnic or social origin, property, health condition or age:

> "(1) Everybody has the right to choose freely his or her profession and the training for such profession as well as the right to engage in enterprise and other economic activity.
>
> "(2) The conditions and limitations for the exercise of certain professions or activities may be set by law.
>
> "(3) Everybody has the right to acquire the means of his or her livelihood by work. The State shall provide appropriate material security to those citizens who are unable through no fault of their own to exercise this right; the respective conditions shall be set by law.
>
> "(4) Different rules may be set by law for foreign citizens."

103. Everybody has the right to freely choose employment, to be employed or self-employed or to pursue any other economic activity, or he may choose not to work if he owns a sufficient amount of money and property. This freedom underlies the Employment Law as well as regulations such as the Civil Code, the Trade-Licensing Law, the Commercial Code and the legislation governing securities, banks, lotteries, etc.

104. Everybody has the right to obtain a job directly or through the competent local (State) authority - employment office. Citizens who are able and willing to work and who report to the employment office with a view to being re-employed are entitled to:

(a) Adequate job placement (i.e. corresponding to the health condition, qualification, age, abilities and previous experience of the jobseeker, taking account of the availability of accommodation);

(b) Retraining necessary for job placement; and

(c) Unemployment assistance prior to job placement and in the event of loss of work.

105. Rules relating to the exercise of this right are set forth in Law No. 65/1965 Coll. (Labour Code) as amended, in Law No. 1/1991 Coll. on employment, as amended, or in Law No. 9/1991 Coll. on employment and on the competence of the authorities of the Czech Republic in the sphere of employment, as amended, including the relevant implementary regulations.

106. Certain professions or activities are subject to statutory conditions and restrictions as to the required qualifications; other criteria may include age, citizenship, etc. These are spelled out in special laws regulating individual professions and activities; however, the overriding principle is the ban on discrimination imposed by article 3, paragraph 1, and article 4, paragraph 3, of the Charter and by international instruments.

107. In order to facilitate the exercise of the right to gain one's livelihood by work, the State must pursue an effective labour market policy. The chief objectives are outlined in the Czech employment legislation: consistent monitoring and assessment of the situation in the labour market, forecasts as well as concepts and schemes for re-employment in the event of loss of work owing to structural changes or retrenchment. These are chiefly counselling and adequate job placement, subsidized job-creation schemes and the creation of jobs in community services, training necessary for re-employment, unemployment assistance prior to job placement, assistance to jobseekers with partial disability.

108. A facility vital to the exercise of the right specified in the first sentence of article 26, paragraph 1, of the Charter is employment service provided free of charge. For the purposes of employment legislation, "employment service" is an activity related to job placement and recruitment, including information and counselling services. Employment services are provided by the competent local authorities - employment offices; private institutions are likewise allowed to run employment services under conditions determined by law. Their services are as a rule free of charge; however, private institutions holding special licenses may charge a reasonable fee corresponding to the real cost of recruitment assistance or job placement.

109. Another indispensable component of the general right to work is the right to retraining for the purposes of re-employment. Employment offices provide retraining services to jobseekers who find it difficult to compete in the labour market due to inadequate training, as well as job training for unqualified jobseekers. Retraining measures are introduced primarily in the spheres affected by structural changes and in industries where technological development has curbed the demand for unskilled or semi-skilled workers. For citizens who have been registered as unemployed for a prolonged period of time, retraining is often the only way to return to the workforce. Retraining schemes are run by institutions providing professional education and training and are free of charge. The participants receive special unemployment assistance which is not available to other jobseekers.

110. The Government of the Czech Republic runs a number of retraining schemes with a view to increasing the employment potential of disadvantaged individuals (in the Czech Republic, this is chiefly the case of the Roma population). The measures designed for retraining and education of unemployed persons in need of special assistance include two projects targeting Romas - ROMSTART and MOST. The target group of ROMSTART is young Romas (15-20 years old) with elementary education who never received any further training. The project has three stages (social integration, motivation and practical training); the objective is to provide job training and implant correct working and social habits. Roma organizations take part in running ROMSTART and the response has so far been favourable. The target group of MOST is

young people aged 14-17 years with elementary or incomplete elementary education who have been registered as unemployed for an unreasonably long time. Again, most of them are Romas. The project is run in cooperation with experts from Stevenson College in Edinburgh. The objective is to increase the employment potential of the target group through job training. Approximately 30 per cent of participants successfully enter the workforce, which is a major success compared with similar schemes in the developed countries.

111. Steps taken to prevent potential problems in the labour market include creation of the post of adviser on Roma issues to the Director-General of the Employment Services Administration of the Ministry of Labour and Social Affairs.

112. Employment legislation provides for financial assistance to jobseekers. Unemployment assistance rates are calculated on the basis of the recipient's net monthly earnings in his last employment: he receives 60 per cent of net earnings during the first three months of unemployment, 50 per cent during the next three months, or he may qualify for 70 per cent of his previous net earnings by enrolling in a retraining course. Jobseekers whose period of entitlement has expired or persons who never qualified for financial assistance under employment legislation are covered by regulations designed for aid to the needy and for determining the poverty level.

113. To obtain unemployment assistance, a citizen must prove that he was employed or engaged in another activity which is deemed equal to employment for the period of time set by law. Unemployment assistance is not provided or is withdrawn where it is found that the recipient simultaneously receives retirement or sickness insurance benefits, has breached work discipline during his previous employment or left his previous job without any reasonable excuse. Financial assistance is not provided to a jobseeker who without any reasonable excuse (e.g. family problems) rejects an available job or retraining programme, neglects the necessary retraining or intentionally frustrates the efforts of the employment office to find him a job. Unemployment assistance is provided from the State budget; however, the contributions paid by employers, employees and self-employed persons under the social insurance scheme go into funds used for this purpose.

114. Employers must create safe working conditions, eliminate hazardous or hard work and create, maintain and improve health care facilities to the extent and under the conditions set by law (sections 139 and 140 of the Labour Code).

115. In legal relations regulated by the employment legislation, aliens and stateless persons as a rule enjoy the same legal status as Czech citizens if they are employed according to Czech laws and regulations; however, they are required to possess a permanent residence permit issued under Law No. 123/1992 Coll. on the stay of aliens in the territory of the Czech and Slovak Federal Republic, as amended, or under Law No. 498/1990 Coll. on refugees, as amended, and a working permit issued by the local employment office. Under Law No. 1/1991 Coll. on employment, a work permit is not required of a refugee who has lived in the territory of the Czech Republic for three years or whose spouse is a Czech citizen or who has at least one child possessing Czech citizenship; this exemption further applies to an alien

(stateless person) who possesses a permanent residence permit or forms part of the household of a member of a diplomatic mission, consular office, or is a member of the staff of an international organization located in the territory of the Czech Republic, provided that an international agreement concluded in the name of the Czech Government guarantees reciprocity. On the other hand, a work permit is required if the alien/stateless person was assigned to perform work in the territory of the Czech Republic on behalf of his foreign employer on the basis of a commercial or other contract concluded with a Czech legal or natural person.

116. Under the Commercial Code, aliens, i.e. foreign legal and natural persons, may set up operations in the territory of the Czech Republic under the same conditions and to the same extent as Czech persons; "operations in the territory of the Czech Republic" are, however, restricted to economic activities pursued through branches and agencies set up in the country. Such foreign legal or natural person and its branches or agencies must be incorporated in the Czech Republic. A foreign person may also participate in setting up a Czech legal person or become a partner or member in an existing Czech legal person. It may set up a Czech legal person or be a single founder of a Czech legal person insofar as the Commercial Code permits companies to be founded by a single person (limited liability company and joint stock company, provided that the founder is a legal person). A foreign legal person may relocate to the Czech Republic insofar as the laws of the State where such legal person was previously located or possibly also by the laws under which it was set up permit such relocation.

117. Special regulations are laid down by the agreement between the Czech Republic and the Slovak Republic on reciprocal employment of their citizens. Under this agreement, work permits are not required in cases of reciprocal employment; an employer must merely register his Slovak employees with the local employment office. The same applies to a Slovak employer who assigns his employees to perform work on his behalf in the Czech Republic.

118. Article 28 of the Charter is the constitutional safeguard of the right to equal remuneration: "Employees are entitled to fair remuneration for work and to satisfactory working conditions. Detailed provisions are set by law." This right belongs only to "employees", i.e. natural persons irrespective of citizenship, employed on the basis of an employment contract or performing work on the basis of a contract for work. Such persons are furthermore equal within the meaning of article 3, paragraph 1, of the Charter.

119. Remuneration for work is governed by Law No. 1/1992 Coll. on wages, remuneration for work and average earnings, as amended, and by Law No. 143/1992 Coll. on salaries and remuneration for work in organizations and agencies financed from the State budget and certain other organizations and agencies. The former regulates wages in business enterprises (regardless of ownership or form) and in institutions such as special interest and civic associations and political parties, where wages are determined by collective bargaining agreements or by individual employment contracts. The latter deals with remuneration in the public service sector (State administration, armed forces, police force and other parts of the public sector - schools, health

care facilities, etc.), where wages are determined by a generally binding regulation determined by the State. Judges and senior State officials are subject to special regulations.

120. Article 27 of the Charter provides constitutional safeguards for the right to form and join trade unions:

> "(1) Everybody has the right to associate freely with others for the protection of his or her economic and social interests.
>
> "(2) Trade unions are established independently of the State. There shall be no limit placed on the number of trade unions and similar organizations, nor shall any of them be given preferential treatment in an enterprise or economic branch.
>
> "(3) Activities of trade unions and the formation and activity of similar organizations for the protection of economic and social interests may be limited by law in the case of measures essential in a democratic society for protection of security of the State or public order or of the rights and freedoms of others.
>
> "(4) The right to strike is guaranteed under conditions set by law: this right does not appertain to judges, prosecutors, and members of the armed forces and of security corps."

121. Article 27 of the Charter guarantees the freedom of coalition; a "coalition" means an association formed by employers or employees seeking to formulate, promote, defend and further their interests in the process of creating and determining working, social or economic conditions. This constitutional provision serves as a basis for Law No. 83/1990 Coll. on associations of citizens, as amended, and for Law No. 120/1990 Coll. on the plurality of trade unions, as amended, regulating certain relations between trade unions and employers, as amended by Law No. 3/1991 Coll. Under Law No. 83/1990 Coll, trade unions do not require official registration and are simply entered in the appropriate register of the Ministry of the Interior. However, the law does not specify the distinction between trade unions and ordinary associations - "trade unions" include all associations which call themselves "trade unions" and are registered as such with the Ministry of the Interior.

<u>The right to social security</u>

122. The right to social security is safeguarded by article 30 of the Charter:

> "(1) Citizens are entitled to material security in old age and during incapability for work, as well as in the case of loss of their provider.
>
> "(2) Everybody who suffers from material need is entitled to such assistance as is essential for securing his or her basic living conditions.
>
> "(3) Detailed provisions in this respect shall be set by law."

123. Detailed rules on the provision and extent of social protection are set forth in Law No. 155/1995 Coll. on pension security, as amended, Law No. 177/1995 on State social assistance, as amended, Law No. 54/1956 Coll. on sickness insurance of employees, as amended, Law No. 482/1991 on needy individuals, as amended, Law No. 463/1991 Coll. on the poverty level, as amended, and Law No. 100/1988 Coll. on social security, as amended. For information on unemployment assistance, see paragraphs 112 and 113 above.

The right to public health

124. Article 31 of the Charter is the constitutional safeguard of the right to public health: "Everybody has the right to protection of his or her health. Citizens are entitled under public insurance to free medical care and to medical aids under conditions set by law."

125. The primary legislation is contained in Law No. 20/1966 Coll. on public health, as amended, and in Law of the Czech National Council No. 550/1991 Coll. on general health insurance, as amended.

126. Every citizen of the Czech Republic permanently residing in its territory (and all persons residing in its territory and working for an employer located in the territory of the Czech Republic) participates in the compulsory general health insurance scheme and pays health insurance contributions (Law No. 550/1991 Coll. as amended). In the case of employees, the contribution is paid partly by an employee, partly by his employer. Dependent children, recipients of pensions under the pension security scheme, recipients of parental benefits (mostly women), persons on maternal and extended maternal leave, jobseekers, severely handicapped persons and persons who take care of them, needy persons who receive social assistance benefits and certain other categories of person are exempt from the duty to pay health care contributions and receive full health coverage from the State.

The right to education and training

127. Article 33 of the Charter is the constitutional safeguard of the right to education:

> "(1) Everybody has the right to education. School attendance is obligatory for a period specified by law.
>
> "(2) Citizens have the right to free education at elementary and secondary schools, and, depending on the citizen's ability and the potential of society; also at university-level schools.
>
> "(3) Other than State schools may be established and instruction provided there only under conditions set by law; education at such schools may be provided for tuition.
>
> "(4) The conditions under which citizens are entitled to assistance from the State during their studies are set by law."

128. Article 3, paragraph 1, of the Charter proclaims the general right to education without any discrimination. Pupils and students may attend any types and grades of school according to their abilities, academic achievement and health condition. This principle underlies all academic procedures,

including eligibility for scholarships, completion of study and certificates of attained education. The same applies to postgraduate (doctoral) study and adult education at universities.

129. The rise in attained education level recorded in the Czech Republic during the last several decades owes much to the steadily increasing number of young secondary school and university graduates, which, as a result of the population change, progressively improves the general education index. The share of persons with elementary education keeps steadily decreasing (e.g. people over 15 years old who have completed only elementary education accounted for 83 per cent of the total population in 1950; the figure has since dropped to 33 per cent). The rise in the last 40 years was quickest for university graduates (9.5-fold increase) and sharpest for graduates of secondary vocational schools (increase of almost 26 per cent).

130. The primary legislation is contained in Law No. 29/1984 Coll. on the system of elementary and secondary schools, as amended, in Law No. 171/1991 Coll. on universities, as amended, and in Law No. 390/1992 Coll. on preschool facilities and schools, as amended.

131. School attendance is compulsory in the Czech Republic. The local School Authority may grant an exemption on the basis of psycho-educational assessment. School attendance as a rule starts on the first day of the academic year (1 September) following the day on which the child completes the sixth year of age. It lasts nine years and ends on the last day of the academic year by which the pupil completes his compulsory school attendance. Persons who endanger the education and upbringing of minors by failing to register a child for compulsory school attendance or by neglecting to supervise the compulsory school attendance of a pupil are guilty of an offence under section 31 of the Law of the Czech National Council No. 200/1990 Coll. on offences, as amended.

132. The structure of educational attainment of economically active persons according to the 1970 and 1991 censuses (relative frequency) is as shown below (%):

Education level	1970			1991		
	Total	Male	Female	Total	Male	Female
Elementary	40.4	29.5	55.3	18.7	13.9	24.0
Secondary vocational	37.1	46.7	25.7	43.1	50.6	34.7
Full secondary total	17.1	16.8	17.4	27.8	23.2	32.9
Inclusive vocational	13.7	14.0	13.3	23.8	20.6	27.4
University	4.6	6.3	3.0	9.4	11.2	7.5
No education	0.1	0.1	0.1	0.1	0.1	0.1
Education not reported	0.5	0.6	0.5	0.9	1.0	0.8

133. Rules on schools providing special instruction for persons belonging to national minorities are set forth in Law No. 29/1984 Coll. on the system of elementary and secondary schools, as amended. In the academic year 1995/96, about 30 schools in the Czech Republic provided instruction in the Polish language (North Moravia) and 1 school in the Slovak language. The Roma minority has never requested education in its own language; on the contrary, they do not seem inclined to sponsor separate schools providing instruction in the Roma language. Special schemes targeting Roma pupils are not based on the "education in minority language" principle - on the contrary, the imperative task is to eliminate the linguistic, social and cultural handicaps which prevent Roma children from completing elementary education and entering secondary schools.

134. A specific task is to identify factors essential to creating viable methods and strategies for teaching Roma children. The crucial issue is the language handicap of Roma children entering elementary school, which often proves a major, but not by any means the only barrier to future education. Other factors underlying poor school performance of Roma children include different personality development, different sets of values, and social and cultural attitudes prevailing in Roma families which shape their approach to education. The Ministry of Education, Youth and Sports explores ways to induce Roma children to complete elementary or secondary schools while taking account of their specific cultural background.

135. The Ministry of Education, Youth and Sports has taken the following major steps to encourage Roma education:

(a) It establishes and runs optional "preparatory classes" for Roma children at kindergartens, elementary schools and special schools before the start of compulsory school attendance. In the academic year 1993/94, 18 classes worked with more than 200 pupils; in the academic year 1994/95 the number increased to 30 classes with approximately 350 pupils and in the academic year 1995/96 it reached 36 classes with 433 pupils. The objective is consistent and systematic guidance targeting not only language skills - the children should learn enough Czech to cope with the elementary school requirements - but also social adjustment;

(b) It prepares pedagogical documentation concerning the specific needs of Roma children, at all times respecting the fact that tolerance should underlie the entire educational system;

(c) It publishes textbooks encouraging respect for differences between cultures and nations;

(d) It cooperates with civic associations, encouraging them to come up with new ideas for the education of Roma children;

(e) Its experts participate in the Council of Advisers for Education of National Minorities;

(f) It issues instructions for schools and educational institutions, urging them to effectively counter racism and racial discrimination. The Instruction of the Deputy Minister concerning action at schools and

educational institutions against manifestations of racism, intolerance and xenophobia, published in the Official Journal of the Ministry of Education, Youth and Sports on 18 August 1995, requires teachers to systematically prepare children and young people for coexistence of various nations, religions and ethnic groups; the correct attitudes should be instilled through appropriate instruction in the context of the ordinary school curriculum as well as through the overall climate of the school and consistent adherence to the principle of education for tolerance. Another significant regulation is the Instruction of the Ministry concerning education of aliens at elementary and secondary schools, including special schools in the Czech Republic in the academic year 1995/1996, published in the Official Journal of the Ministry of Education, Youth and Sports in May 1995 and the Instruction concerning Czech language courses for persons with refugee status in the territory of the Czech Republic, published in the Official Journal of the Ministry of Education, Youth and Sports in June 1995;

(g) Its training schemes for teachers include instruction in Roma history and culture and the experience of other countries in educating Roma pupils;

(h) Local school authorities and inspectors monitor the situation at schools as regards manifestations of racism and general intolerance. The inspection conducted at elementary schools in 1996 focused on steps taken by individual schools to counter manifestations of racism, intolerance and xenophobia. The incidence of "open racism" in this particular age group was found to be rather low; most conflicts are triggered by the children's inability to tolerate anything which differs from the established pattern. A surprising discovery was that Roma children tend to manifest xenophobia and intolerance towards other ethnic groups more frequently than their schoolmates;

(i) It supports Roma authors and publishers who produce textbooks designed for Roma children.

136. Another alternative for the support and education of Roma children is State grants provided for concrete projects targeting the Roma population. Seven projects are now funded by the State under the programme of development of elementary and secondary education and under the extra programme. The project "model of education of Roma children and young people in the natural elementary school environment" was launched in 1996 and will be completed in three years.

137. Since 1992, the University Development Fund has financed projects designed to train elementary school teachers. Five schools of education provide their students with rudiments of the Roma language and culture and teach them alternative strategies for education of Roma children; the Faculties of Education in Ústi nad Labem and Olomouc run projects involving a much wider multicultural spectrum. Funds allocated for such activities total CK 908,000. The relevant projects and programmes include "psychological preparation for teaching Roma children" (Faculty of Education, Masaryk University, Brno), "multicultural education of the Roma ethnic group in North Bohemia" (J.E. Purkyně University, Ústi nad Labem), "education for

tolerance and cultural pluralism" (Faculty of Arts, Palacký University, Olomouc), "removing the barriers which hinder university study by Roma students" (Palacký University, Olomouc).

138. Since 1990, the Ministry of Education, Youth and Sports has funded Roma civic associations organizing free-time activities for Roma children and adolescents. The annual budget is CK 1 million.

139. Employers are responsible for the appropriate training of employees engaged without the necessary occupational qualification. Employers are likewise responsible for the retraining of employees who are transferred to a new workplace or to a new type of work, especially in the context of corporate restructuring or retrenchment.

140. Participation in on-the-job training for the purpose of improving the qualification required under the employment contract is counted as part of the employee's work and the employee is entitled to receive his regular wages for the period spent on such training.

141. Participation in on-the-job training for the purpose of acquiring the qualification required under the employment contract is regarded as an interruption of work on the part of the employee. In such cases, entitlement to leave and remuneration is determined by the appropriate legislation or by collective bargaining agreements (section 126 of the Labour Code).

The right to equal participation in cultural activities

142. Article 34, paragraph 2 of the Charter is the constitutional safeguard of the right to equal access to cultural wealth, stipulating "The right to access to the cultural wealth is guaranteed under conditions set by law".

143. The relevant legislation is subject to article 3, paragraph 1, of the Charter which prohibits discrimination on grounds enumerated therein. It includes Law No. 20/1987 Coll. on care of historical monuments, Law No. 148/1949 Coll. on the National Gallery in Prague, Law No. 53/1959 Coll. on the standardized public library system, Law No. 54/1959 Coll. on museums and galleries, Law No. 94/1974 Coll. on archives, as amended, Law No. 468/1995 Coll. on radio and television broadcasting, as amended, sets out the duties of broadcasters in connection with ensuring equal access to broadcasting.

The right to equal access to services intended for use by the general public

144. The relevant constitutional safeguard is in the aforesaid article 3, paragraph 1, of the Charter. Specific legislation protecting this right is contained in Law No. 634/1992 Coll. on consumer protection, as amended. This law introduces certain business rules designed for consumer protection, defines the tasks of government agencies in the sphere of consumer protection and the rights of consumers, consumer associations or associations of other legal persons established to protect consumer interests. The law covers only products and services sold in the territory of the Czech Republic. Otherwise, it may apply only if the sale is connected with economic activities pursued in the territory of the Czech Republic.

145. Section 6 of the aforesaid Law explicitly prohibits discrimination against consumers: "In connection with the sale and provision of products and services, the seller must not act in contravention of good business practice; namely he must not discriminate against the consumer in any respect."

146. Supervision over compliance with the duties set by the above law is the task of the Czech Commercial Inspection, an agency authorized to issue binding instructions for corrective action concerning any deficiencies which it may detect. Contraventions of the regulation cited above are punished by a fine not exceeding CK 500,000 - the fine is calculated taking into account the extent of the contravention and its consequences. In case of a repeated contravention occurring within one year, the maximum fine is CK 1 million. The fine may be imposed within three years after the date of the contravention. The decision to impose a fine does not affect the liability for damage.

Article 6

147. For the constitutional protection against racial discrimination, see paragraphs 11-14 above.

Exercise of the rights of the victim and reparation in criminal procedure

148. As regards protection in criminal law, protections for the rights under article 3, paragraph 1, of the Charter are contained in sections 196, 198 and 198a of the Criminal Code. Section 196, paragraph 2, protects groups of inhabitants and individuals against violent attacks or dangerous threats provoked by their political conviction, nationality, race, religion or lack of religion. Section 198 covers the defamation of a nation, race and conviction and section 198a deals with incitement to national and racial hostility. Additional protections are in section 49 of the Law of the Czech National Council No. 200/1990 Coll. on offences, as amended. For details see under article 4 above.

149. The significant status of the victim in Czech criminal procedure fully respects the fundamental principles of criminal procedure; the status of the crime victim is deemed crucial to achieving the following objectives of the criminal procedure:

(a) Investigation of crimes and just punishment of perpetrators according to law;

(b) Enforcement of the rule of law through criminal procedure;

(c) Crime prevention and suppression;

(d) Increasing public awareness of the spirit of strict adherence to the laws and rules of good civic relations.

150. Ancillary procedure is part of the criminal procedure and deals with the victim's right to reparation. Ancillary procedure is not separate from the criminal trial in terms of time and form. The two processes overlap, notably in the presentation of evidence. Consequently, the ancillary procedure is

governed by the "principle of officiality" (or "principle of judicial investigation", one of the basic principles of Czech criminal procedure, which requires all law enforcement authorities to take legal action "in their official capacity", i.e. to act as soon as the offence comes to their knowledge, irrespective of any formal complaint). The Code of Criminal Procedure thus ensures reparation for damage suffered as a result of a crime. At the same time, the Criminal Code is a strong tool of crime prevention - the requirement that the offender must compensate for the damage caused by his act ensures reparation and has a significant preventive effect as well.

151. According to the comparatively broad definition in the Code of Criminal Procedure, the "injured party" is any person to whom the offender caused bodily harm, property damage, or moral or any other harm. The injured party need not necessarily qualify for compensation for damage to property (money compensation). Under the Code of Criminal Procedure, the injured party is a proper party to a case and thus may actively participate in the trial, making motions and interventions with a view to facilitating proper conduct of the investigation and the correct verdict.

152. The injured party may be either a natural or legal person of the State. The basic rules for reparation in criminal procedure are:

(a) The injured party is the only participant in the ancillary procedure. The injured party has the legal right to claim reparation against the defendant;

(b) In criminal trial, the court may consider claims which would otherwise come under the jurisdiction of other authorities;

(c) The verdict of guilt may include award for reparation even in situations where such reparation should normally be claimed in a separate civil suit.

Reparation in civil procedure

153. As regards civil law, the applicable rules are in Law No. 58/1969 Coll. on liability for damages caused by a decision of a State authority or by its erroneous official action, as amended. On the basis of this law, the State is liable for damages resulting from an unlawful decision, a detention order or penalty decision, or an erroneous official action.

154. Reparation for damages resulting from an unlawful decision is contingent on the decision having been made by a State authority, the decision being unlawful, and all available remedies against the decision having been exhausted. Reparation may be obtained only if the unlawful decision is annulled by an authority competent to annul such decisions on the basis of any of the extraordinary channels of appeal (motion for reopening the case; second appeal; review of the decision in administrative procedure, i.e. not in the ordinary appellate procedure).

155. The legitimity of decisions made by administrative authorities is reviewable by ordinary courts.

156. Liability for damages resulting from detention orders and penalty decisions exists where the detention or penalty were effected and the defendant was subsequently acquitted or the criminal prosecution was suspended.

157. The party liable for damages caused by erroneous official action is the State, and the entitled parties are legal and natural persons who were parties to the proceedings which resulted in an unlawful decision or erroneous official action. The liability of the State is objective; the law does not permit exoneration on any grounds.

158. The form and extent of reparation are governed by the Civil Code, unless provided otherwise by the aforesaid provisions. The Civil Code covers the following cases of compensation:

(a) Compensation for actual damage and loss of profit;

(b) Compensation for earnings lost during the period of incapacity to work and in the period following incapacity to work;

(c) Compensation for earnings lost upon termination of incapacity to work;

(d) Compensation in the event of death;

(e) Compensation for medical expenses;

(f) Compensation for harm to reputation or human dignity.

Article 7

159. Protection against discrimination (including racial discrimination) is the regular theme of seminars organized by, e.g. the Institute for Education of Judges and Public Prosecutors for judges, public prosecutors and junior clerks.

Prevention of inter-ethnic conflicts

160. The programme for social conflict prevention and crime prevention, coordinated by the National Committee for Crime Prevention, supports inter alia, schemes and projects designed to prevent inter-ethnic conflicts - programmes focusing on social issues, educational programmes, programmes for free-time activities, and social therapy for risk groups and programmes designed to improve interpersonal relationships. The target groups are:

(a) Minority and ethnic communities;

(b) Children and adolescents exposed to sociopathological hazards;

(c) Predelinquent and delinquent adolescents prone to the most extreme manifestations of xenophobia, racism and anti-Semitism.

161. Concrete examples of programmes and projects are:

(a) Support for the establishment of the Roma Information Centre at Most. The centre provides guidance for contacts with State authorities and other institutions, trains Roma women as child welfare workers and assists them in their work, organizes weekend trips for Roma children;

(b) Support for projects run by the Roma Culture and Education Centre in Brno (equipping the centre for cultural activities and hobbies of Roma children, project designed to prepare Roma children for school attendance, additional instruction for Roma children having problems at elementary school);

(c) Support for "low-threshold" centres, guidance facilities, psychological counselling, helplines, "streetwork" and "clubwork" projects for children and adolescents exposed to sociopathological hazards in the suburban housing estates of Ostrava;

(d) Support for publications designed for schoolchildren and dealing with themes such as "legal awareness" or "racism", published at Olomouc;

(e) Grants to support a training programme for the municipal police at Vsetin. The programme includes instruction on how to work with ethnic communities. For additional information, see paragraphs 135 to 138 above.

Education for national minorities

162. An organic component of the educational system in the Czech Republic is the concept of State-run education provided in the mother language, based on the framework of principles embodied in the Constitution and in the Charter. The operative legislation - Law on the system of elementary and secondary schools and Law No. 564/1990 Coll. on State administration and self-administration in the educational system, as amended - enable the establishment of schools or classes providing instruction in the mother language to children with other than Czech nationality, whose parents are citizens of the Czech Republic. However, the opening of such schools is contingent on the wishes of the parents, usually expressed through a civic association.

163. The primary task of education for national minorities is to cultivate the cultural awareness of persons belonging to national minorities to foster the feeling of integrity in relation to the Czech Republic, to bring children up to be good citizens and, naturally, to provide education corresponding to the level of educational attainment prevailing in the majority population. Discrimination in education on grounds of membership of a national minority is thus ruled out.

164. The educational system in the Czech Republic includes 30 schools serving the Polish national minority in North Moravia. The network of schools providing instruction in the Polish language includes kindergartens, elementary schools, one secondary school and Polish classes at secondary vocational schools. One of the elementary schools located in the district of Karviná (North Moravia) provides instruction in the Slovak language and all

the official procedures necessary for establishing a secondary school for the Slovak national minority have been completed. However, it has not yet been opened due to lack of interest on the part of Slovak families.

Policy in relation to national minorities

165. Financial intervention of the State in this sphere basically consists of grant-making through the competent ministries (Ministry of Culture and Ministry of Education, Youth and Sports) to support concrete projects for the development of cultural heritage, free-time activities of children and adolescents and publication of minority periodicals. The projects are as a rule submitted by associations of citizens belonging to national minorities.

166. The Charter (article 25) provides for the right of persons belonging to national minorities to develop their own culture. Concrete culture-related activities of persons belonging to national minorities are subject to special legislation regulating certain activities in the sphere of culture.

167. In line with the individualized approach to minority rights, the preservation of minority cultural heritage depends chiefly on the commitment of associations of citizens belonging to national minorities. Subject to the "Principles for awarding grants from the State budget to civic associations" effective since 1993 (Government Resolution No. 663/1992 Coll.), the State makes grants on the basis of concrete projects submitted by civic associations. The following table shows grants made by the Ministry of Culture since 1993:

Allocations (millions CK)

1993	1994	1995	1996
12.26	8.6	9.5	10.0

168. The Ministry of Culture annually awards grants on a competitive basis to projects aimed at the conservation and development of the cultural heritage of national minorities in the Czech Republic. The projects focus on amateur art, education, documentation of the history of national minorities, folk art, folk art festivals, publishing and folk art courses for children.

169. In organizing its cultural activities, each national minority stresses the forms which are adequate to its organizational structure and cultural expression. For this reason, the record of individual minorities in this sphere has been remarkably divergent.

Cultural activities of the minorities

170. Slovak national minority. The Slovak national minority is now in the process of self-constitution which temporarily hinders the work of its organizations, including cultural activities. Moreover, Slovak organizations do not have at their disposal premises and funds comparable to the resources of other minorities. Nonetheless, this minority with its strong artistic potential can be expected not only to organize cultural and social events for its own members, but also to establish a strong presence in professional art,

which would be an achievement uncharacteristic of minority cultures in the Czech Republic. Through such efforts, a minority ceases to be a closed circle and becomes a visible part of the political community.

171. Polish national minority. Compared with other minorities, the Polish national minority has created a formidable range of cultural facilities and activities, encompassing amateur art (choirs, folk art groups, amateur theatre, bands and orchestras, etc.), "culture houses", publishing houses and a professional theatre company (incorporated in the Těšín Theatre).

172. German national minority. The German national minority maintains its cultural traditions through organizing the social life of its own members. The events usually seek to revive the ancient traditions and customs of German settlers in the territory of the Czech Republic. The chief objective of German associations in the Czech Republic established since 1989 is to create a network of their own cultural facilities; some of them already serve the social and cultural needs of the German minority.

173. Roma national minority. The strong trend towards emancipation immediately after 1989, accompanied by burgeoning cultural efforts, started to abate after 1993. This development is reflected in the number and quality of projects recently submitted to the Ministry of Culture by Roma organizations. One of the very few successful projects which is no longer of a purely local interest is the Museum of Roma Culture in Brno, and institution for which suitable housing remains to be found. Construction of the monument to Roma victims of the Second World War at the site of the former internment camp at Lety near Písek started in 1994 and the monument was unveiled in May 1995. The required funds were provided by the Ministry of Culture.

174. Hungarian and Ukrainian national minorities. The cultural activities of the Hungarian and Ukrainian national minorities focus on organizing the social and cultural life of their members. Since 1994, the Ukrainian minority has stepped up its efforts and is now frequently organizing social functions not only for Ukrainians, but also for other national communities namely in Prague.

175. Other minorities. The Ministry of Culture has also funded projects submitted by persons belonging to other national minorities, e.g. Greeks and Croats.

Education for tolerance

176. The Ministry of Education, Youth and Sports is now taking steps to introduce education for democracy, tolerance and human rights in the civic education programmes at elementary and secondary schools. However, the relevant activities have not taken root as yet and thus cannot serve as an effective tool for promoting tolerance among individual national communities.

Council for Nationalities

177. The Council for Nationalities (hereinafter referred to as the Council) was established on 11 May 1994 on the basis of Government Resolution No. 259 to advise the Government on policy in respect of persons belonging to national

minorities in the Czech Republic, and to coordinate and initiate action in this sphere. The Council is organizationally part of the Prime Minister's Office. The Council performs the following tasks:

(a) Participates in the preparation of government measures which involve the rights of persons belonging to national minorities;

(b) Gives advisory opinions on draft legislation, government directives and measures which involve the rights of persons belonging to national minorities before they are submitted;

(c) Prepares for the Government's comprehensive reports on the situation of national minorities in the territory of the Czech Republic;

(d) Formulates for the Government or its ministries or other administrative authorities recommendations regarding the needs of persons belonging to national minorities, notably in the spheres of education, the use of the mother language, social and cultural life;

(e) Coordinates the practical implementation of the Government's policy relating to national minorities by individual ministries and administrative authorities;

(f) Cooperates with local authorities in the practical implementation of the Government's policy relating to national minorities;

(g) Cooperates with the Ministry of Foreign Affairs in the sphere of the international aspects of the status and rights of persons belonging to national minorities.

178. Representatives of individual national minorities - members of the Council - are appointed on the basis of recommendations from minority organizations or experts belonging to the relevant minority. The council also comprises the Deputy Ministers of Finance, Culture, Labour, Education, Interior and Foreign Affairs and their permanent representatives, representatives of the Parliament of the Czech Republic and the Office of the President of the Republic.

179. Priority areas on the Council's agenda in the years 1993-1996 included:

(a) Preparation of materials on policy in respect of national minorities for meetings of the Government of the Czech Republic (e.g. "Concept of the approach of the Government to issues relating to national minorities in the Czech Republic"; annual reports on the situation of national minorities in the Czech Republic);

(b) Principles of grant-making policy in respect of publishers of minority periodicals and grants awarded in individual years;

(c) Grant-making policy of the Ministry of Culture for development and preservation of minority cultures;

(d) Problems relating to racial violence and discrimination;

(e) Problems connected with acquisition of Czech citizenship by Slovak citizens, in particular by those belonging to the Roma minority;

(f) Programmes of Czech Radio and Czech Television targeting national minorities;

(g) Specific problems of individual minorities (Slovak, Polish, German, Roma, Ukrainian and Hungarian);

(h) Concrete activities connected with the needs of certain national minorities (Romas - Museum of the Roma Culture in Brno, monument to Roma victims of the Second World War at Lety near Písek; Poles - "Poles in the Těšín Region" exhibition, property-related problems of Polish organizations, etc.).

Significant organizations of persons belonging to national minorities in the Czech Republic

180. The register of the Ministry of the Interior now comprises 124 minority associations and several political parties and political movements established by persons belonging to national minorities (Party of Citizens with Roma Nationality in the North Bohemia Region, Roma Civic Initiative, Christian and Democratic Party of Romas, Movement of Active Romas - political movement, Roma National Congress - political movement, Czech Minority and Roma Movement in the Czech Republic - political movement, Coexistentia - political movement). The Organization of Independent Romanians was dissolved on 11 January 1996 by resolution of the Supreme Court of the Czech Republic. The motion for its deletion from the register of political parties has not yet been made. In addition, a number of foundations have been established by persons belonging to national minorities or by donors who wish to support them.

181. This diversified organizational basis has played a crucial role in the life of national minorities; it is essential to all the "self-help" activities through which national minorities exercise their rights.

182. National minorities in the Czech Republic are not as a rule characterized by distinctions such as a "national" religious life. Citizens of the Czech Republic who do not classify themselves as Czech usually belong to the same religious bodies as the majority population. Minor exceptions include the Silesian Evangelical Church (part of the Polish national minority), the Slovak Evangelical Community in Prague and the German Evangelical Community in Prague. Very small groups of citizens who do not classify themselves as Czech profess, for example, the Orthodox faith (Greeks, Russians).

183. Slovak national minority. Organizations of persons belonging to the Slovak national minority are for the most part located in Prague. An exception is the Community of Slovaks with its six regional branches (in Brno, Kladno, Karlovy Vary, Ostrava, etc.). Despite their varying interests, Slovak associations cooperate to a certain extent. Since 1993, their leaders regularly meet on an informal basis ("Forum of Slovak Activities").

Core civic associations include the Club of the Slovak Culture; the Community of Slovaks in the Czech Republic; the Democratic Alliance of Slovaks in the Czech Republic.

184. Polish national minority. The network of Polish associations is traditionally extensive; since 1992 the umbrella organization has been the Congress of Poles in the Czech Republic. Polish associations include youth organizations (e.g. Harcerstwo Polskie), professional organizations (e.g. associations of Polish teachers, students of medicine, journalists, etc.), various clubs and foundations (Educational Foundation, Collegium canticorum, Beskyd Slaski, etc.). Most members of the Polish minority living in the Těšín area are members of several Polish organizations.

185. Some of the Polish organizations own imposing property, e.g. the Polish Cultural and Educational Union has established and runs through its local branches the "Houses of the Polish Cultural and Educational Union", local centres of social and cultural life which as a rule attract members of the local population irrespective of nationality.

186. Major organizations of the Polish national minority include:

Congress of Poles in the Czech Republic; its executive body is the Council of Poles in the Czech Republic

Polish Cultural and Educational Union in the Czech Republic

Educational Foundation in the Czech Republic

Beskyd Slaski

Association of the Polish Youth

Szmauz Community of Artists

187. German national minority. Associations of the German national minority can be roughly divided into two separate and independent groupings. The Cultural Association of Citizens with German Nationality in the Czech Republic, established in 1968, operates many local branches which do not have legal personality. For the most part, its members belong to the older generation. Another organization is the Assembly of Germans in Bohemia, Moravia and Silesia, established in 1992 to serve as an umbrella organization for the 16 existing local and regional unions - separate entities with legal personality. Such unions exist in all regions traditionally inhabited by the German minority. The envisaged network of "meeting centres" to serve the cultural and social life of the German minority is now partly in place (České Budějovice, Cheb, Jihlava, Šumperk, Moravská, Třebová, Chomutov, Opava, Liberec, Praha, Trutnov, Brno, Jablonec nad Nisou and Havířov). The necessary funds were provided by the Government of the Federal Republic of Germany.

188. Roma national minority. By early 1994, the Ministry of the Interior had registered more than 30 Roma civic associations which, however, tend to be loose structures controlled by traditional clans and hampered by frequent conflicts among their leaders. As a result, none of them has managed to

achieve a dominant position in the Roma community and effectively promote the views and requirements of Romas. Moreover, many Roma organizations, political movements and parties now exist only on paper. Major Roma organizations include the Council of the Democratic Union of Romas in the Czech Republic, the Society of Experts and Friends of the Roma Museum in Brno, the Roma Democratic Congress (claims to be an umbrella organizations, but functions only on an ad hoc basis), the Roma Civic Initiative (political party).

189. Hungarian national minority. After 1989, persons belonging to the Hungarian national minority, living mostly in Prague and in the Ostrava-Karvinà agglomeration, established the Union of Hungarians Living in the Czech Lands.

190. Ukrainian national minority. After 1989, citizens belonging to the Ukrainian minority established the Association of Ukrainians in the Czech Republic. In 1994, a group of members of this civic association broke away to form the now very active Ukrainian Initiative in the Czech Republic. Both organizations are located in Prague.

191. Even some very small national or ethnic groups have established their own organizations, e.g. Ruthenians (Community of Ruthenians in the Czech Republic), Croats (Association of Citizens with Croat Nationality in the Czech Republic), Greeks (Association of Greek Communities), Russians (Otchag - Association of Russian Countrymen), Bulgarians (Bulgarian Cultural and Educational Organization), etc.

The right to disseminate and receive information

192. The right of persons belonging to national minorities to disseminate and receive information in their mother language is safeguarded by the Charter (article 25). The law on Czech Radio and the Law on Czech Television explicitly define the primary duties of the media towards persons belonging to national minorities. Broadcasters are required to develop the cultural identity of national minorities in the Czech Republic.

193. Periodicals and non-periodical publications in minority languages are subject to Czech press-related legislation without any additional restrictions.

194. Czech Radio operates autonomous Slovak, Roma, German and Polish sections. The sections produce programmes designed for persons belonging to national minorities which are broadcast by regional studios and by the RADIOŽURNAL station several times per week. In addition, the RADIOŽURNAL station has its own German, Roma, Slovak and Polish sections. The REGINA station broadcasts programmes for the Slovak, Polish, Croat, Hungarian, German, Roma, Ukrainian, Jewish and Vietnamese communities.

195. The only television programme for national minorities is ROMALE, designed for the Roma population and broadcast twice a month (premiere and re-run). Costs associated with the production are included in the budget of Czech Television.

196. Television programmes in other minority languages and programmes about national minorities in the Czech Republic are now on the agenda of the Council for Nationalities and the Council of Czech Television. In the years 1995-1996, Czech Television ran the "Under One Roof" series about national minorities in the Czech Republic; television documentaries in this area include films produced by the Film and Sociology Foundation.

197. The right to disseminate and receive information in minority languages is exercised above all through the publication of periodicals and non-periodical publications by certain civic associations or other national organizations.

198. Grants made from the state budget for publications in minority languages (in CK):

1993	1994	1995	1996
4,228,400	19,879,000	23,510,000	24,000,000

The grant-making procedure is subject to the "Principles governing the economic arrangements for minority publications", approved by Government Resolution No. 277/1993 (amending Government Resolution No. 46/1996).

199. Non-periodical minority publications are published by "national" establishments such as the Polish OLZA, Slovak DANUBIUS, TRILABIT, the German Bernhard Bolzano Foundation, etc. as well as by certain Czech publishers (including universities and similar institutions). Publications relating to Romas in the Czech Republic merit special attention.

The right to use the mother language

200. The Charter (article 25) safeguards the right to use the mother language in official communications subject to the rules specified by law. Under Law No. 71/1967 on administrative procedure administrative authorities are required to give all persons participating in administrative procedures equal opportunities to effectively assert their rights and interests, which means that the right of persons who are not proficient in Czech to use their own language is a general procedural principle. The right to use a minority language in communications with law enforcement authorities and in judicial proceedings is fully guaranteed and specified by the Code of Civil Procedure, the Code of Criminal Procedure and by the Law on the Constitutional Court.

201. The operative Czech legislation does not determine the official language. In consequence, individual minority languages may be deemed equal to the Czech language in administrative as well as judicial procedures. This situation has created problems especially in the Český Těšín area, where the Polish population insists on using the Polish language in communications with the local authorities. In the absence of any specific guidelines, the authorities are making every effort to comply with such requirements. In the sphere of judicial practice, the right to use one's own language is not subject to any restrictions.

202. The right to use a minority language in private and in public is safeguarded by the Charter (article 25). Inscriptions of a private nature (e.g. shop signs, etc.) are not subject to any legislative or executive restrictions. Official local names in the Czech Republic are subject to Ordinance No. 97/1961 Coll. on local names, street names and house numbers, as amended by the subsequent regulations. Pursuant to the relevant decision of the Ministry of the Interior, official local names are determined by the Statistical Lexicon of Municipalities. The use of local names in a minority language is not covered by any specific regulation, nevertheless, the aforesaid Ordinance does not rule it out. The same applies to other topographical indications. The practice of using signs and inscriptions in the Polish language is widespread in the Český Těšín area (shops, restaurants, etc.) and the Polish language is used in public according to the needs of the Polish minority.

203. Requirements concerning the use of bilingual local names and other topographical indications have been tabled above all by the Polish population in the Český Těšín area. They demand that Polish local names and other topographical indications should be used side by side with their official Czech versions in areas traditionally inhabited by Poles. This problem is now on the agendas of the Council for Nationalities of the Government of the Czech Republic, the Ministry of the Interior and the competent local authorities.

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